

IN THE SUPREME COURT OF CALIFORNIA

IN RE ATTORNEY DISCIPLINE SYSTEM;)
REQUESTS OF THE GOVERNOR AND)
THE STATE BAR OF CALIFORNIA.) S073756
_____))

**REPORT OF SPECIAL MASTER
SEPTEMBER 25, 1999 THROUGH MARCH 28, 2000**

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SPECIAL MASTER
CALIFORNIA STATE BAR DISCIPLINARY FUND

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In compliance with *In re Attorney Discipline System; Requests of the Governor and the State Bar of California* (1998) 19 Cal.4th 582, 625, the Special Master for the California State Bar Attorney Discipline System submits his fourth report to the Court.¹

As this is likely the final report to the Court in my capacity as Special Master, I have included not only the normal status updates of the discipline-related activities of the State Bar (see pages 2-17 below), but also recommendations concerning the general structure and operations of the State Bar (see pages 17-41 below) and suggested procedures for the disbursement of remaining discipline-related funds (see pages 41-43 below).

Because more than 80% of the State Bar's activities relate to the discipline system,² any operational aspects necessarily affect the discipline system. Accordingly, matters such as management, financial solvency and technological capabilities are of issue both to the Court and to the public as they will impact both the regulatory and non-regulatory functions of the State Bar. The recommendations below touch on these

¹ I previously informed the Court that this Report would be delayed, as I was waiting for necessary information from the State Bar.

² Currently, 81% of the State Bar's year 2000 budget relates to the discipline system. Last year, 67% of the State Bar's budget related to the discipline system.

and other matters and are intended as constructive recommendations in anticipation that they may assist the State Bar maximize its capabilities to render its services to members and the public.

I.

Status Reports on Discipline Functions of the State Bar

A. The Discipline Fund

The proceeds of the Discipline Fund (the "Fund") continue to be invested in short term investment instruments, with the majority of these investments in government bonds. Attached as Appendix A is a report tracking the receipts and disbursements of the Fund since its inception.

As Special Master, I reviewed the disbursements made each month and authorized transfers of monies from the Fund to the State Bar General Fund to liquidate approved expenditures. As of March 23, 2000, the balance in the Fund is \$4,726,470.³ However, because I have approved numerous technology-related

³ Upon my appointment, I instructed that the \$173 special assessment ordered by Rule 963 be deposited in a segregated Special Master bank account (the Fund) and accounted for apart from the State Bar's General Fund. The State Bar also transferred the mandatory statutory assessment for discipline, i.e., \$27 from each member, to the Fund so that all discipline-related funds could be monitored collectively. Technically, the \$27 portion need not have been transferred to the Fund. Accordingly, on January 1, 2000, consistent with an earlier State Bar Board of Governors' resolution, the State Bar transferred \$593,884 from the Discipline Fund to the General Fund. This amount represents the proportional remaining amount as of December 31, 1999 of the statutory \$27 fee allocated for discipline. These funds must be earmarked for
(continued...)

projects (see discussion below at 29-30), the actual unappropriated amount remaining in the Fund as of March 23, 2000 is \$3,726,225.

B. Current Staffing

The State Bar Disciplinary System continues to recall and rehire previous State Bar employees as well as hire new employees. Human Resources continues both to interview and hire employees for those positions that remain vacant and to conduct orientation programs for new State Bar employees.

As of March 11, 2000, the State Bar reports that it has filled 331.5 of the 390.5 discipline-related positions authorized as a result of the Special Assessment.⁴

C. Components of State Bar Disciplinary System Funded By Special Assessment

1. Office of Chief Trial Counsel ("OCTC")

(a) *Restaffing.* In light of the reorganization of both its Los Angeles and San Francisco operations (see Third Report at 7-8), OCTC continues to fill its remaining vacant positions. Currently, OCTC is recruiting actively for three vacant Attorney II positions and five paralegal positions. In recent months, OCTC has hired

³ (...continued)
discipline-related expenses only and should be placed in a restricted fund.

⁴ The current number of authorized State Bar Disciplinary System positions differs from that reflected in the Third Report because, since the filing of the Third Report, I have approved hiring for additional positions. (See Third Report at 2.)

seven attorneys, who will be reporting to work by the end of March. OCTC reports that it has filled all of its investigator positions.

(b) *Status of OCTC inventory.* The table below reflects the status of OCTC's current inventory as well as its inventory over the past twelve months as of the first of each month indicated. "Inventory" refers to all open matters pending in OCTC. As reported in the table below, the inventory has been divided into three smaller subcategories — *inquiries* (written communications concerning the conduct of an attorney that are reviewed in the first instance by OCTC's Intake staff and are either forwarded to OCTC's Investigations staff for further investigation or closed), *investigations* (matters currently being investigated by OCTC's Investigations staff that are either forwarded to OCTC attorneys for prosecution or closed), and *trial counsel* (matters currently being handled by OCTC attorneys before the State Bar Court). The inventory also encompasses the statutory "backlog," which refers to investigation matters that have been pending with OCTC more than six months (non-complex investigations) or more than one year (complex investigations).

1999/2000	INQUIRIES (INTAKE)	INVESTIGATIONS	TRIAL COUNSEL	BACKLOG
MARCH 1	4,050	2,800	1,450	2,272
APRIL 1	4,050	2,425	1,450	1,828
MAY 1	3,450	2,400	1,400	1,936
JUNE 1	3,066	2,590	1,342	1,855
JULY 1	2,693	2,678	1,276	1,773

1999/2000	INQUIRIES (INTAKE)	INVESTIGATIONS	TRIAL COUNSEL	BACKLOG
AUGUST 1	2,482	2,689	1,216	1,883
SEPTEMBER 1	1,697	2,664	1,142	1,802
OCTOBER 1	1,666	2,699	1,099	1,755
NOVEMBER 1	1,659	2,730	1,033	1,721
DECEMBER 1	1,730	2,767	1,016	1,709
JANUARY 1	1,979	2,834	923	1,736
FEBRUARY 1	2,041	2,845	872	1,725
MARCH 1	2,201	2,748	926	1,603

As this table reveals, since March of last year, OCTC has decreased its entire inventory by 2,425 matters. In March 1999, OCTC's inventory (i.e., the combined total of inquiries, investigations and trial counsel matters) totaled 8,300 matters, while, as of March 1, 2000, the inventory totaled 5,875 matters. These improvements are in large part the result of OCTC's use of priorities, which I strongly encouraged, and which the State Bar's Board Committee on Regulation and Discipline then recommended to the State Bar Board of Governors and which the Board of Governors adopted. (See First Report at 13.)

(c) Intake. As the above table reflects, OCTC has decreased its inventory of inquiries dramatically since March of last year. Most recently, however, OCTC has seen an increase in its inquiry inventory. In late-December and early-January, OCTC created and filled six complaint analyst positions for its intake unit. In addition, in late February, OCTC temporarily assigned three attorneys to review and

identify which inquiries should (i) be forwarded to Enforcement, (ii) be closed, or (iii) be further analyzed by the complaint analysts. With these additions and modifications, OCTC anticipates that the inquiry inventory will soon return to approximately 1,600, which is the normal level.

OCTC reports that, in February 2000, it received 898 new inquiries — the most inquiries received in one month since the State Bar resumed full operations last year. Although OCTC reports that, at the beginning of the year, it is typical to receive a large number of inquiries, it is unclear at this time whether the February inquiries represent a larger trend or simply fall within the typical early-year pattern.

OCTC reports that it is receiving regular reports from its telephone service provider concerning the “busy rate” for OCTC’s Toll Free Consumer Hotline. The “busy rate” reflects each unsuccessful attempt to reach the Consumer Hotline by phone, including each repeat attempt from callers who may call several times in succession until they are connected. As of March 6, 2000, OCTC reports that the busy rate was between 8 and 15%, which is comparable with the busy rate experienced prior to the 1998 shutdown of the Consumer Hotline. Finally, OCTC reports that consumers appear satisfied with the Consumer Hotline hours of operation.

(d) Investigations and Trial Counsel. As the above table reflects, the inventory for investigations decreased only slightly over the past year, while the inventory at the Trial Counsel stage decreased more significantly but, most recently,

increased slightly. OCTC reports that this fluctuation is to be expected as matters are moved through the system, from intake to investigations to trial counsel.

OCTC reports that at least part of the bottleneck at the investigation stage resulted from OCTC's fundamental staff reorganization and the consequent steep learning curve for new hires. (See Third Report at 7-8.) OCTC anticipates that, because it has completed its staff reorganization, matters will move more quickly and smoothly through these stages as the reorganized staff becomes more proficient in their new or reassigned roles. Although the reorganization caused some delays as matters were reassigned, substitutions were made, and files were reviewed by new recipients, OCTC reports that all pending investigations have been assigned to investigators. The average caseload for each investigator in Los Angeles is 37 matters. In San Francisco, the average caseload for each investigator is 60 matters.

(e) Backlog. As of March 1, 2000 and as reflected in the above table, OCTC reports that, over the past month, it has decreased the statutory backlog from 1,725 to 1,603.⁵ More significantly, since March of last year (when the backlog was at 2,272), OCTC has decreased the backlog by 669 matters.

2. State Bar Court

(a) Restaffing. As of March 1, 2000, the State Bar Court reports that 27 of its 37 authorized positions are filled. The State Bar Court continues to recruit

⁵ The table reflects revised OCTC backlog numbers.

actively for one vacant position, but will not seek to fill its remaining nine positions unless and until they are justified by increases in the State Bar Court's workload.

(b) Status of Caseload. The State Bar Court reports that, as of March 3, 2000, there are 356 open cases in the Hearing Department and 42 open cases in the Review Department. Since Presiding Judge Obrien's order dated March 29, 1999 terminating emergency abatement standards (see Second Report at 8), the State Bar Court reports that, as of March 3, 2000, the Hearing Department holds 26 cases in abatement. The Review Department has no abated cases. The State Bar Court reports that the majority of these abated cases are proceedings in which there is either a pending mental competency proceeding (Bus. & Prof. Code § 6007(b)) or in which a recommendation of disbarment has been filed or is pending before the Supreme Court in another proceeding.

The number of new cases initiated in the State Bar Court remains below historical figures. (See Third Report at 8-9.) Of the 516 new cases filed in 1999, the State Bar Court reports that 465 were disciplinary cases and 51 were regulatory matters (which include moral character admission matters, reinstatement petitions and requests for involuntary inactive enrollment). Between January 1 and February 29, 2000, the State Bar Court reports that there have been 77 disciplinary cases and 8 regulatory proceedings filed in the State Bar Court. In contrast, in 1996, 901 disciplinary proceedings and 180 regulatory proceedings were filed in the State Bar

Court and, in 1997, 956 disciplinary proceedings and 168 regulatory proceedings were filed in the State Bar Court.

Finally, the State Bar Court reports that, in 1999, 68 resignations with charges pending were filed and that, during January and February 2000, 12 resignations were filed, which projects to an annualized rate of 72 in the year 2000. In contrast, in 1996, 93 resignations were filed and, in 1997, 115 were filed.

3. Other

(a) Professional Competence. Professional Competence reports that it has staffed each of its authorized positions. Professional Competence reports that, between March 15, 1999 and February 29, 2000, the Ethics Hotline received 12,334 calls (2,392 of which were received in the year 2000), with an overall completion rate of 73% and a completion rate of 78% for January and February 2000. The average response time from inquiry to call back is one hour. Professional Competence reports that, at the request of inquirers, it has distributed 1,255 copies of various published advisory ethics opinions.

(b) Office of General Counsel ("OGC"). As of March 3, 2000, OGC reports that it has filled all staff positions authorized out of the Discipline Fund.

As discussed in previous Reports, OGC continues to work on many discipline-related matters before the Court and elsewhere. OGC's discipline-related work includes responding to petitions for review of State Bar Court decisions, addressing labor-related issues and conducting contract negotiations. As of March 3, 2000, OGC

reports that there are 15 discipline cases pending before the Court or on appeal before the United States Supreme Court, 22 pending *In re Walker* petitions, and one pending request for depublication of a review department decision, which OGC filed on behalf of OCTC. In addition, OGC reports that, as of March 3, 2000, it had 66 open discipline-related civil matters, including actions brought by complaining witnesses or respondents against the State Bar, subpoenas for discipline records, labor-related cases involving discipline staff employees, and bankruptcies in which the debtor owes discipline costs and/or reimbursement to the Client Security Fund.

OGC recently communicated to the Court concerning a proposed amendment to rule 955 of the California Rules of Court, which would expand the circumstances under which an attorney is required to notify his clients of his or her suspension.

OGC continues to advise the State Bar regarding both labor issues associated with the recall and hiring of staff and the availability of discipline records on the State Bar's website. OGC is taking an active role in the Library Users Group, which is working to improve the State Bar's research libraries.

(c) *Fee Arbitration.* As of March 20, 2000, Fee Arbitration reports that its staff consists of the Director, two Senior Administrative Assistants and one temporary employee. There remains one vacant staff position — an Administrative Secretary position. The Board of Governors approved this position as part of the year 2000 budget and Fee Arbitration anticipates posting it in the near future.

Fee Arbitration reports that it will soon begin recruiting additional arbitrators (both attorney and non-attorney). Although Fee Arbitration currently has available 290 State Bar arbitrators, the majority of these arbitrators are from seven counties only. Twenty-eight counties do not have any available State Bar arbitrators, while another seven counties have only one available State Bar arbitrator. Fee Arbitration reports that this lack of arbitrators not only seriously delays Fee Arbitration's ability to assign and process arbitration proceedings, but sometimes also requires arbitrators to travel considerable distances to conduct arbitrations.

Fee Arbitration continues to process new and pending requests for fee arbitration. Fee Arbitration reports that, as of March 1, 2000, it has 155 open and pending fee arbitration proceedings and 85 open enforcement proceedings. Fee Arbitration continues to receive telephone inquiries concerning the program and reports that, between January 1 and February 29, 2000, it received 410 calls (217 calls in January and 193 calls in February). Fee Arbitration also continues to mail program information packets to clients and attorneys and reports that it mailed 61 packets in January 2000 and 68 packets in February 2000.

In an effort to streamline its procedures, Fee Arbitration has sought two amendments to the Rules of Procedure for Fee Arbitration and the Enforcement of Awards by the State Bar (the "Arbitration Rules"). First, at its December 1999 meeting, the Board of Governors approved an emergency amendment to Rule 21.1 of the Arbitration Rules, which increases the minimum amount in dispute required for

entitlement to a three-member fee arbitration panel. The previous minimum amount in dispute was \$7,500. The emergency amendment minimum amount is \$10,000.

Because most fee disputes involve less than \$10,000, Fee Arbitration reports that this emergency amendment has made the assignment of single arbitrators much easier and efficient.

In addition, at the February Board of Governors meeting, Fee Arbitration proposed an amendment to Arbitration Rule 11.1 that would allow local bar associations, with the consent of the parties, to adjudicate fee disputes that originate in other counties and that would otherwise go to the State Bar for resolution. This would permit, for example, Santa Clara County and Monterey County local bar associations to hear disputes arising in Santa Cruz County, which does not have a local bar association. Under the current rule, disputes arising in counties such as Santa Cruz County that do not have a local bar association would come directly to the State Bar. The same program could be used for cases in which there is a conflict of interest between a participant and his or her local bar association, such as when a participant is an officer in the local bar association or involved in the fee arbitration program itself. The program also provides opportunities for attorneys to participate in a valuable public service by volunteering time through their local bar association.

D. Urgency Rules and Policies

1. Urgency Rules

(a) *Early Neutral Evaluation Conferences.* As reported in past Reports, Urgency Rule 75 provides for an early neutral evaluation process whereby State Bar Court judges can conduct Early Neutral Evaluation Conferences ("ENE Conferences") before a notice of disciplinary charges is filed against an attorney. The State Bar Court reports that, as of February 29, 2000, 122 ENE Conferences have been requested and 104 have been conducted. Of the 122 ENE Conferences requested, the State Bar Court reports that OCTC requested 29, respondents counsel requested 8, and OCTC and respondents counsel requested 83 jointly.⁶ The State Bar Court reports that, of the 104 ENE Conferences that have been conducted, 37 resulted in stipulated dispositions, 14 resulted in potential stipulated dispositions, 1 resulted in resignation with charges pending, 36 resulted in the filing of Notices of Disciplinary Charges with the State Bar Court, and 7 resulted in the anticipated filing of Notices of Disciplinary Charges.⁷ Thus, as a result of Urgency Rule 75, no less than 38 matters have been resolved prior to the filing of a Notice of Disciplinary Charges.

OCTC reports that, although the ENE Conferences may slow the prosecution process somewhat, the benefits of the ENE Conferences far outweigh any delays. For

⁶ State Bar Court records do not reveal who requested the remaining two ENE Conferences.

⁷ The State Bar Court does not have a record of the remaining ENE Conferences conducted, as their disposition may still be pending or may not have been reported to the State Bar Court.

example, OCTC reports that, with the benefit of neutral case evaluations, OCTC is better able to manage its cases as well as allocate its resources accordingly.

(b) Default proceedings. As reported in past Reports, the Board of Governors adopted Urgency Rule 205, which governs default proceedings and permits the State Bar Court in certain circumstances to recommend to the Supreme Court that it suspend indefinitely a defaulted respondent. (See Second Report at 16.) As of March 3, 2000, the Court has issued final disciplinary orders in two default proceedings in which it imposed the indefinite actual suspension under rule 205. The State Bar Court reports that, as of February 29, 2000, hearing judges have invoked Urgency Rule 205 — that is, recommended indefinite suspension — in at least 18 additional matters.

(c) Submitted matters. As reported in the Initial and Second Reports, amended Rules 220(b) and 305(d) of the State Bar Court Rules of Procedure impose a 90-day limit on the length of time a matter taken under submission on or after February 1, 1999, may remain under submission. The State Bar Court reports that, as of March 1, 2000, there are no undecided matters in either the Hearing Department or the Review Department that have been under submission for more than 90 days.

(d) Waiver of oral argument. As reported in past Reports, amended Rule 304 of the State Bar Court Rules of Procedure permits a party to waive oral argument before the Review Department. The State Bar Court reports that, since my last report to the Court, there have been no such requests to waive oral argument.

2. OCTC Policies

(a) *Intake priority policy.* OCTC's priority intake policy continues to assist OCTC in evaluating incoming and pending matters in a more efficient and effective manner. (See discussion above at 5-6.)

(b) *Brady-like discovery policy.* It still remains unclear, at this point, whether OCTC's Brady-like discovery policy has had any significant effect on the settlement of matters. (See Third Report at 16.) Although some respondents and/or their counsel have taken advantage of the policy, most have not. OCTC reports that between November and December 1999, there were 22 requests for such discovery. During the months of January and February 2000, there were only 16 such requests.

(c) *ENE Conference policy.* (See discussion above at 14-15.)

II.

Recommendations

The Court appointed me to "supervise and oversee the collection, disbursement, and allocation of fees mandated by rule 963 [of the California Rules of Court] . . . [and to] ensure that funds collected pursuant to rule 963 are used exclusively for the purpose of maintaining and operating an attorney discipline system." (*In re Attorney Discipline System supra*, 19 Cal.4th at 626.) I was not appointed to supervise the day-to-day management of the State Bar. (*Id.* at 624.) Because the Court, as opposed to the Legislature or State Bar Board of Governors,

appointed me, I believe that I have occupied a neutral position, which has provided me with a unique perspective to assist and critique the operations of the State Bar.

The following are constructive recommendations aimed at improving and strengthening the State Bar for the benefit of its members, the public and the courts. The recommendations are broad in nature and are not meant to be similar in nature to those recommendations made in the 1994 “Report of the Discipline Evaluation Committee to the Board of Governors,” or DEC Report.

Although the following recommendations are divided into four general headings — finances, governance and management, technology, and discipline — they are not independent of one another. Recommendations under one heading often impact and overlap with recommendations under other headings.

A. Finances

Under the present legislative scheme, State Bar finances are placed in a difficult and precarious position. On the one hand, the Legislature holds a strong grip, and in recent history perhaps too strong a grip, on the State Bar's budget and livelihood from year to year. On the other hand, the State Bar Board of Governors exercises control over the allocation of the State Bar's finances. The full-time State Bar executives and administrators are left to carry out the changing demands of the Legislature and Board of Governors. The following recommendations address some of the peculiar dilemmas that stem from the State Bar's unique financial structure.

- C *Amend budget and legislative process by enacting State Bar budgets that cover three-year periods — as opposed to the current one-year period — and, during each three-year period, permit the State Bar to seek from the Legislature any needed budget increases*

The State Bar's current budgetary process fosters severe and detrimental financial instability for the State Bar. Currently, representatives of the State Bar must spend a large portion of each year in Sacramento lobbying for the State Bar's fee bill for the following year. Not only does this create an unhealthy obsession with the annual budget, but more significantly, it precludes the State Bar from making long term strategic plans. The scenario is demoralizing and causes inefficiencies and short and long term problems. A recent and clear example of this is the impasse over the 1998 fee bill, which resulted in the layoffs of hundreds of State Bar employees. Indeed, that crisis has resulted in difficulties recruiting staff to re-fill positions during the restaffing and restructuring of operations.

Without knowledge of its future finances, the State Bar cannot plan for the future and is dramatically hindered by its inability to engage in such basic and essential financial planning. Indeed, no public or private business can operate effectively and efficiently on such a precarious year-to-year basis. In addition, this process requires that the State Bar expend on an annual basis both monetary and human resources on the budgetary process.

This problem for the State Bar may be somewhat alleviated if the Legislature were to approve a fee bill that provides for a rolling three-year budget, as opposed to

the current one-year fee bill and corresponding annual budget. Under such a scenario, the State Bar would establish with the Legislature the appropriate floor for members' annual fees. There should not be any substantial debate concerning the minimum level of services to be provided by the State Bar, as the State Bar is statutorily required to manage a discipline system. Knowing its budget for the next three years, the State Bar could, among other things, (i) make long-term strategic plans for its future, (ii) redirect valuable resources toward the implementation of such plans and away from the task of securing a fee bill for the very next year, and (iii) raise employee morale. If the State Bar requires an increase in its budget, the State Bar could seek special legislation for any such increase.

In at least two fundamental ways, the State Bar differs from state agencies that operate on annual budgets. First, the State Bar is not a state agency. It is a public corporation without financial backing from the state. Second, in contrast with state employees, State Bar employees do not enjoy the protections of civil service laws. The recent far-reaching layoffs and virtual shutdown of the State Bar evidence both the State Bar's unique position and why the State Bar requires a budget process that differs from that of state agencies.

The State Bar active member fees for the last ten years were as follows:

1990	\$440.00
1991	\$478.00
1992	\$478.00

1993	\$478.00
1994	\$478.00
1995	\$478.00
1996	\$478.00
1997	\$458.00
1998	\$77.00
1999	\$250.00

When compared with other professional association and license fees, the State Bar's annual fees are not high. In California, not only is our Bar a unified bar — i.e., it conducts both discipline and professional licensing functions — but it also has a large number of members and therefore must handle a relatively high volume of discipline cases. In further contrast with other professional associations, the State Bar bears the costs of review proceedings for disciplined members. That is, other professionals seek review of disciplinary proceedings through administrative mandamus actions, which are funded by the statewide trial courts. In contrast, except for final determinations by the Court, attorneys must seek review of discipline through the State Bar Court, which is funded exclusively by membership fees.

Perhaps the appropriate professional fee for California attorneys should be set with reference to other professional association fees. For example, Medical Doctors are required to pay \$600 for a two year license.⁸ If they are interested in joining a

⁸ There is a bill pending currently (SB 1045) that seeks to raise the license fee for
(continued...)

professional association, membership fees for such associations can be more than \$1,000. As discussed above, because the State Bar is a unified bar, attorneys must pay dues not only for their state license, but also for their professional association as well as their discipline system.⁹ For the year 2000, membership fees for the State Bar were \$395 for active members for the year.

B. Governance and Management of the State Bar

In general, it would be beneficial for the State Bar to re-articulate the mission and role of both its Board of Governors and its executive staff. The following recommendations address general management and governance issues facing the State Bar.

C *Focus the Board of Governors on policy issues affecting the State Bar and focus the State Bar executives and administrators on the day-to-day management of the State Bar*

The State Bar Board of Governors (the "Board") appears overly to concern itself with the details of the day-to-day management of the State Bar. Although the Board's interest in the daily affairs of the State Bar evidences the Board's legitimate concern for the operations of the State Bar, when the Board becomes overly involved

⁸ (...continued)
medical doctors by \$100. Thus, if passed, the fee would be \$700 for two years.

⁹ Also in contrast with discipline proceedings against physicians, OCTC may not recover its attorneys' fees. However, OCTC may recover costs for certain disciplinary proceedings. (Bus. & Prof. Code § 6086.10.)

with such details, both the Board and the State Bar (and therefore its members and the public) suffer. As is common with Boards of large organizations such as the State Bar, decision-making is often a time consuming process. Thus, if the Board determines to consider a particular administrative issue, it can take months (or years) to make a decision, during which time the State Bar administrators may be left without guidance or the ability to take any action as to the particular issue before the Board.

For example, despite its interest, the Board has not effected appreciable improvements in the State Bar's technology. Some time ago, the Board took an interest in the technology of the State Bar and commissioned studies on the state of the State Bar's technology, followed by discussion at Board meetings. However, despite the Board's sincere interest and involvement in the status of State Bar's technology, until recently the State Bar lacked sufficient and up-to-date technology (both hardware and software), which is critical not only to the discipline system but to general operations and the provision of membership services as well. (See discussion below at 29-30.) For example until recently, attorneys and secretaries often worked with different word processing programs and therefore could not work with each other effectively. Had the Board limited its involvement to the larger policy issue of whether or not the State Bar required updated technology, the State Bar administrators could have implemented the Board's policy directive more effectively.¹⁰

¹⁰ Although, in 1994, the Board made provisions for \$5 million in technology
(continued...)

In another more recent example, the Board involved itself with the format and substance of the year 2000 membership fee statement. The Board participated in the details of designing the annual fee statement. That is, the Board considered and voted on how the statement would appear when members received and opened it. When large groups attempt to come to a consensus on a particular issue, competing interests are often lobbied, resulting in a complex and confusing product reflecting aspects of the multiple and differing competing interests. This is exactly what happened with the State Bar's year 2000 fee statement.

The statement is unnecessarily complex and evidences the various interest groups (such as the State Bar sections and Conference of Delegates) that lobbied for recognition on what should be a simple statement. Indeed, the statement is so complex that the bank that processes the completed statements — and charges a fee each time it processes or attempts to process a completed statement — has been unable to process many of the statements this year. The bank has had to send these problem statements to the State Bar for manual processing by its staff, who then return the statements to the

¹⁰ (...continued)
improvements and thereafter made improvements to the State Bar's mainframe and purchased now-obsolete computers, by the time of the State Bar's 1998 financial crisis, there remained \$1.6 million of these technology improvements funds. This money is now being used to fund technology improvements that I have approved and that require a contribution from the General Fund because they affect the State Bar as a whole as opposed to its disciplinary functions only.

bank.¹¹ The bank then charges the State Bar a second time for processing the statement. Thus, by delving into the details of the fee statement, the Board created an overly complex fee statement — typically a revenue-making matter — which has cost the State Bar in time and resources spent attempting to process completed statements manually and on the bank's doubled transaction costs.¹²

The Board also considered and voted on a substantive decision concerning the year 2000 fee statements. In particular, the Board decided to offer fee credits for those members who had paid voluntary fees during the State Bar's fiscal crisis. If all eligible members sought the offered credit on their year 2000 fee statement, this decision carried a potential \$11 million risk. Despite this large risk, the Board not only agreed to offer the credit, but reserved only \$2.45 million in the year 2000 budget to cover potential credits taken. Thus, the Board risked the financial stability of the State Bar on

¹¹ Although it is speculative as to the exact reason or reasons for the high volume of manual processing required this year, it is evident that the complexity of the fee statement played a role and created long delays in the processing of the statements.

¹² The bank charges \$100 for every 1,000 transactions — that is, every time the bank processes a fee statement (even if it determines that it must forward the statement to the State Bar for manual processing), it charges 10 cents. Between November 1999 and February 2000, these charges totaled \$80,627 more than the same charges for processing the 1999 fee statements between November 1998 and February 1999. Additionally, to complete the manual processing of those fee statements forwarded from the bank to the State Bar, the State Bar has had to assign eight full time employees and four full time temporary employees to this task. It is safe to estimate that the total cost to the State Bar stemming from its year 2000 membership fee statements is well over \$100,000.

the basis of a questionable assumption — that most members eligible for the credit would donate their credit back to the State Bar. Although many attorneys and law firms have donated their credits to the State Bar, some (including some of California's larger law firms) have decided to take the credit while others have not yet decided whether to donate the credit to the State Bar. Fortunately, two Senior State Bar executives were concerned enough to provide for a very conservative reserve to cover any shortfall resulting from the new scaling provisions. It turns out that this reserve will provide sufficient coverage for the shortfall resulting from the voluntary credits taken. That staff decision avoided a potential material financial problem.

In general, rather than the details of management, the Board should focus its energies on, and make decisions concerning, the overriding policy issues facing the State Bar. The able and full-time State Bar executives and administrators are in a better position to make, and should be free to make, day-to-day management decisions and to implement the Board's policy directives. The Board must rely on and delegate to the State Bar executives and senior staff.

C *Recruit and hire as the Executive Director of the State Bar a strong management-oriented person with full authority to make day-to-day management and budget decisions*

To run a smooth and efficient State Bar, the Executive Director must have strong management capabilities and perhaps a business background and must be entrusted with the implementation of the Board's policy decisions through the day-to-

day management of the State Bar. Over time, the Executive Director will possess an institutional memory and continuity that will foster a much needed stability within the State Bar, which a revolving Board necessarily lacks.

It is also important that the Board reaffirm the Executive Director's *budgetary* controls over every department of the State Bar, including the Office of Chief Trial Counsel ("OCTC"). Although OCTC is largely autonomous from the rest of the State Bar and alone is subject to the Board Committee on Regulation and Discipline (Bus. & Prof. Code § 6079.5), the Executive Director maintains budgetary authority over OCTC. Accordingly, OCTC must work together with, and provide information to, the Executive Director in order to set a proper budget. (See DEC Report at 53.)

C *Improve information sharing*

In part due to its outdated technology, the State Bar appears to lack effective tools for sharing information and data. It is anticipated however, that, with its recently updated technology (see discussion below), the State Bar will be better able to share information among its various departments. The State Bar should make a concerted effort to improve this area of its operations.

C. *Technology*

In large part, the State Bar exists to accumulate, process and provide information for its members and the public. Without a doubt, to accomplish these basic functions, the State Bar requires sophisticated and current technology. Unfortunately,

however, until recently, the State Bar had substandard computer hardware and software, which greatly hampered the State Bar's ability to accomplish basic functions.

With substantial assistance from State Bar executives and staff, I was able to allocate funds from the Discipline Fund toward specific technology-related projects. The State Bar executives and staff identified areas in which updated technology was necessary. To date, \$1,385,379 has been spent on such projects.¹³ (See Appendix A.)

As reported in the Third Report, I have approved significant updates to both the State Bar's hardware and software systems. (See Third Report at 17.) To date the State Bar has made and continues to make significant improvements to its technology systems. Attached as Appendix B are descriptions of both the completed and pending technology improvement projects that I have approved. Most businesses and law firms recognize that their computer technology must be continuously maintained and updated. Similarly, the State Bar must continue to conduct an ongoing technology needs analysis to determine which areas would benefit most from additional updated technology as well as routine maintenance.

The following recommendations address technology-related concerns.

¹³ In addition, I provided the resources of the Jones, Day, Reavis & Pogue (the "firm") technology department on a *pro bono* basis to assist the State Bar and offer suggestions concerning various software and hardware, with which the firm has had experience.

C *Restructure the information systems and technology department, and create and fill a position for Director of Information Systems and Technology, who will report directly to the Executive Director*

It is clear that the State Bar needs to reorganize and strengthen its computer services department. In light of the fundamental importance of this department, this is an essential task. To start, the State Bar should rename the department with an appropriate title, such as the Information Services and Technology department. As part of the reorganization of this department, the State Bar should hire a full time Director, who will be responsible for managing the department and who will report directly to the Executive Director and be an equal member of the Senior Executive Team. For further restructuring, the State Bar should conduct a management audit of the department and implement productive recommendations.

C *Conduct and establish a fund for routine maintenance and updating of computer hardware and software*

The State Bar disciplinary system runs on technology. Unfortunately, however, it is now a fact of life that computer software and hardware become obsolete almost as soon as they are purchased. With this in mind, it is essential that the State Bar establish and maintain a technology reserve large enough to support the routine maintenance and updating of its computer technology. Without such routine maintenance, and despite its recently updated technology, the State Bar will quickly return to possessing outdated technology. Indeed, it may be necessary for the State Bar to hire additional staff to

assist with routine technology maintenance. By maintaining current technology, the State Bar will be a more efficient and effective organization and consequently will better serve the needs of its members and the public.

C *Establish and maintain a technology position in each department*

To alleviate delays associated with minor technology-related problems that commonly arise, the State Bar should establish a technology position within each of its departments. An employee in such a position would be responsible for addressing and, it is hoped, fixing minor technology-related problems that commonly occur within his or her department. Currently, whenever such a problem arises, the particular department must report it to the computer services department and then wait until someone from that department can fix it. Thus, to save time and to promote smoother operations, the State Bar should have an employee within each department who can address minor and/or common technology problems. Although that employee need not be dedicated solely to such tasks, his or her job description should reflect this responsibility.

C *Utilize contract services as well as State Bar employees to maintain and expand the State Bar's website and on-line services*

The State Bar should expand the use of its website. As a public service organization, the State Bar is in the business of providing information to and concerning its members. The internet is an effective modern tool for such information dissemination. Not only can the State Bar continue to post information about its

members and upcoming events, but the State Bar could provide, for example, MCLE programs on-line. In addition, the State Bar should explore and implement the use of the internet for membership billing.

Having committed itself to hosting a website, the State Bar must further commit itself to maintaining accurate and updated information on its website. To do so, the State Bar requires a combination of both dedicated internal resources and external contract services. Of course, during its funding crisis, the State Bar did not have the resources necessary to update and expand its website. With its renewed funding, however, the State Bar should commit resources to the maintenance and expansion of its website. Because the State Bar is both a unique and large entity, it requires assistance from both its own employees — who are familiar with the unique operations and needs of the State Bar — and outside vendors or contract employees — who may be better situated to maintain a sizeable and complex website.

D. Discipline

In light of my involved supervision of the State Bar's disciplinary system for the past year, the following recommendations relating to State Bar's discipline functions are somewhat more specific than the preceding recommendations. In most instances, the State Bar has already taken steps to implement the recommendations, many of which I have discussed with State Bar executives over the past year.

1. Office of the Chief Trial Counsel ("OCTC")

Although OCTC has made clear progress in its efforts to structure a more efficient and effective department, further progress is required. It is important to note, however, that, as a consequence of the many layoffs experienced at the State Bar in 1998, OCTC lost many seasoned attorneys and the many recently hired attorneys face a steep learning curve. The priorities set by OCTC last year have been beneficial and have enabled OCTC not only to move matters through the system more efficiently, but also to settle more matters.¹⁴

The following are recommendations, some of which OCTC has already begun to implement, that should assist OCTC in achieving its goal.

C *Improve and streamline notice drafting process*

Historically, in light of *Maltaman v. State Bar* (1987) 43 Cal.3d 924 and *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, OCTC has maintained a very burdensome notice drafting process. I am not convinced, however, that the law mandates such burdensome procedures. OCTC should review these burdensome historical procedures with an eye toward streamlining the current costly and elongated notice drafting process. Additionally, I urge OCTC to continue to improve its notice

¹⁴ Although it is clear that OCTC cannot prosecute every case, complainants may be distressed by this fact, especially when the complainant believes that his or her case warrants a complete investigation and prosecution. However, before OCTC prioritized matters, the State Bar felt it was necessary to continue matters for seemingly indefinite periods of time in order to investigate them fully, only ultimately to close many of them with no further action. Nothing could be more frustrating than that.

drafting process by developing and implementing the use of standardized pleading forms and templates. Such standardized tools should reduce dramatically the time required to draft notices of charges filed with the State Bar Court.

Ⓒ ***Refine procedures for determining appropriate sanction(s)***

Similarly, OCTC should continue to refine internal standards for determining the appropriate range of sanctions in particular types of cases. By articulating clear standards, OCTC will foster consistency among and between similar types of cases and should result in increased settlements at earlier stages of proceedings.

Ⓒ ***In conjunction with the State Bar Court, simplify processing of default cases***

As previously described, the Board of Governors adopted Urgency Rule 205 in an attempt to streamline default proceedings. (See discussion above at 15-16.) Although this new Rule appears to relieve a portion of OCTC's burden with regard to default cases, such cases currently occupy 25-30% of OCTC's caseload. OCTC and the State Bar Court together should continue to improve such proceedings.

Ⓒ ***In conjunction with the State Bar Court, develop and implement minor misconduct program***

In conjunction with the State Bar Court, OCTC should continue to develop and eventually implement a minor misconduct program, through which OCTC would prosecute ***minor*** discipline cases on an expedited basis. Under such a program, respondents would face a limited or capped sanction, not to include or exceed actual

suspension from the practice of law. In return, however, the respondent would have no right to formal discovery, have limited rights to call and examine witnesses, and have a limited amount of time for a formal hearing. In each case, the respondent would have the right to opt out of the minor misconduct program if he or she so desires. Such a program should aim not only to expedite and move cases through the system quickly and efficiently, but also to resolve cases to the satisfaction of all involved.

C *Develop and implement volunteer attorney specialists program for mediation of low priority cases*

Similarly, OCTC should continue to develop and eventually implement a volunteer attorney specialists program, through which volunteer certified specialists would mediate those cases that OCTC will not investigate or prosecute. In such instances, OCTC would appoint volunteer attorney specialists (such as certified family law specialists and certified criminal law specialists) as Special Mediators for OCTC, with the authority to resolve the underlying dispute. The program would require the participation of both the respondent attorney and the complaining party. It is anticipated that such a program will assist OCTC in both attacking its pending inventory of complaints with more speed and focusing its attention on the more serious, higher priority cases, which have the greatest risk of client and/or public harm. The program would also provide further opportunities for attorneys to participate in a valuable public service as volunteer mediators.

**C *Staff separate phone line for judicial inquiries
regarding member discipline records***

OCTC should better publicize and improve its phone line dedicated to answering judicial inquiries concerning member status. It is important for the judiciary to have easy access to such information, as judges often must verify an attorney's membership status within a short time frame. It appears that this service is not currently well-known. The State Bar should better publicize it to all California judges and their staff.

2. *State Bar Court*

Although the State Bar Court also has made clear progress in its efforts to structure a more efficient and effective department, further progress is required. The following are recommendations, some of which the State Bar Court has already begun to implement, that should assist the State Bar Court achieve its goal.

C *Reduce length of opinions*

State Bar Court judges should streamline their opinions. When appropriate, they should also incorporate the facts of a particular case by reference to the pleadings in that case. By streamlining their opinions and, when appropriate, incorporating facts by reference to the pleadings, State Bar Court judges could shorten both their opinions as well as the time it takes to write them, thus saving the State Bar Court valuable time and space. As OCTC improves its use of standardized forms, State Bar Court judges will be better able to incorporate by reference well-pleaded facts, especially in default

cases. If a State Bar Court judge believes that a particular case does not lend itself to such incorporation by reference (for example if the pleadings are deficient), the judge should so indicate. A State Bar Court judge may also determine not only to incorporate by reference the facts as pleaded, but also to augment those incorporated facts with additional facts the judge finds relevant.

**C *Improve and formalize effective case management,
including procedures for Early Neutral Evaluations***

As previously described, in an attempt to settle matters before OCTC files a notice of disciplinary charges against an attorney, Urgency Rule 75 established procedures for State Bar Court judges to conduct Early Neutral Evaluation Conferences, or ENE Conferences. (See discussion above at 14-15.) I have and continue to stress that, together with the effective use of OCTC's case priorities and improved standards of appropriate levels of discipline, ENE Conferences should reduce substantially both OCTC's and the State Bar Court's caseload at an early point in proceedings. As a result, OCTC and the State Bar Court may focus their resources on the more egregious matters.

The ENE process may be improved with minor modifications aimed at formalizing the process. For example, when OCTC wishes to request an ENE, after having first obtained (or attempted to obtain) a mutually agreeable ENE date with the respondent, OCTC should advise the State Bar Court of both OCTC's request for an ENE and the parties' agreed date. Following this request, the State Bar Court should

issue an ENE notice to all parties involved, which sets a timeline and includes a description of the ENE process — for example, that parties are required to exchange (and file with the State Bar Court) documents in advance of the ENE and that, if the ENE is unsuccessful, OCTC may file a formal, and therefore public, disciplinary charge against the respondent. By receiving such a formal notice from the State Bar Court, the respondent should participate more seriously in the proceedings.

In addition, it is important for the State Bar Court judges to participate actively in ENE Conferences and to strive both to resolve the matters and to limit ENE Conferences to one session. The value of the ENE Conference is greatly increased when not used to delay the discipline process. Each judge presiding over an ENE Conference should issue his or her neutral evaluation of the matter without delay. Similarly, when the participants cannot settle, OCTC should not delay in filing its notice of disciplinary charges.

C *Conduct initial and substantive status conferences in court*

State Bar Court judges should require respondents to appear personally for their initial status conference and all conferences or hearings during which significant issues will be heard. Although State Bar Court judges sometimes conduct status conferences by telephone to accommodate respondents who would otherwise have to travel far to attend the status conference, it is important to maintain an official and formal atmosphere during court proceedings, especially at the outset of a case.

Telephonic conferences are acceptable for routine and less consequential status conferences.

III.

Disbursement and Management of Remaining Special Master's Discipline Fund

As of March 23, 2000, there is \$3,726,225 remaining and unappropriated in the Special Master's Discipline Fund. In order to ensure that these monies continue to be used only for their intended uses (i.e., the State Bar's discipline-related functions), I recommend that the following safeguards be implemented by order of the Court after my tenure as Special Master has ended:

- C The Special Master's Discipline Fund should remain segregated from all other State Bar funds.
- C All requests for use of the Special Master's Discipline Fund monies should have a direct or substantial impact on either the discipline-related functions of the State Bar or the maintenance and/or enhancement of State Bar technology.
- C The State Bar Senior Executive Team (currently comprised of the Executive Director, Secretary, General Counsel, Chief Trial Counsel, Chief Court Counsel, Senior Executive for Admissions & Certification, Senior Executive for Administration & Finance, and Senior Executive for Human Resources) ("SET") should review and evaluate all requests for use of the Special Master's Discipline Fund monies and make final decisions on such requests.
- C The Executive Director should authorize all disbursements from the Special Master's Discipline Fund.
- C SET should monitor the use of approved disbursements from the Special Master's Discipline Fund and make final determinations on projects for which additional or unexpected expenses arise.

C The Discipline Fund should be audited in the normal course of business along with the other State Bar accounts. The external auditors should certify to the Court that the State Bar has complied with the above four procedures or any other procedures that the Court establishes.

These safeguards are consistent with the Court's December 3, 1998 Order and are within the Court's jurisdiction as the Court ordered collection of the special assessment as well as reserved authority over the disbursement of funds collected pursuant to the special assessment. (*In re Attorney Discipline System, supra*, 19 Cal.4th at 624, fn. 26.)

A portion of the remaining monies should be set aside and used for the routine maintenance and modernization of State Bar technology. Other items may include relocation costs and membership billing improvements. A number of proposals have been submitted to me for my evaluation and approval. Although I believe that these proposals are appropriate discipline-related projects, their total costs exceed the available funds remaining in the Special Master's Discipline Fund. I believe that, at this time and applying the procedures suggested above, SET should evaluate the pending proposals and make final determinations on them. (See Appendix C for descriptions of these proposals.)

It is important to bear in mind that, in addition to making the difficult decisions between which proposals to fund, the routine maintenance of the State Bar technology is a priority and also requires adequate funding. I urge the Board of Governors to allocate additional funding for such projects from the State Bar's General Fund.

IV.

Conclusion

I believe that this is an appropriate time for the Court to conclude my services as Special Master for the State Bar Attorney Discipline System. I believe that I have complied with the Court's December 3, 1998 Order and that the Court's mandate has been discharged. In addition, the State Bar has expended, with my approval, the bulk of the funds collected pursuant to the Court's special assessment. Finally, because the State Bar should soon hire a new Executive Director, the time is ripe to facilitate a clean and smooth transition-period during which the new Director may assume his or her position.

I would like to express my appreciation to the State Bar executives and staff and the State Bar Board of Governors for their assistance during what must have been a very difficult year for them.

Dated: March 28, 2000

Respectfully submitted,

Elwood Lui
Special Master for
the California State Bar
Attorney Discipline Fund

EXHIBIT A

The State Bar of California
Statement of Revenue, Expenses
and Changes in Fund Balances
Special Master
March 23, 2000

	1/1/1999 - 2/29/00
<u>REVENUE</u>	<u>AMOUNT</u>
Membership fees	27,297,068
Interest from investments	770,355
Other revenues	<u>403,889</u>
TOTAL REVENUE	<u>28,471,312</u>
 EXPENSES:	
Expenses 12/31/98	2,292
General and administrative exp.	21,763,287
Computer purch. and technology:	
PC Upgrades	815,951
Implement Upgraded Word Processing	134,364
Upgrade AS400 Internet/database servers	182,172
Install Fire wall for WAN	11,506
Seagull J Walk product (Provide GUI Interface)	21,761
Allow 00 in case year for OTC, SBC & OGC	121,231
Perform Needs Analysis	20,498
Voicemail Upgrade	50,250
Reprogramming discipline AS400 reports	17,680
Replace Token ring Topology in LA - Partial	<u>9,966</u>
Total Computer purch. and technology	<u>1,385,379</u>
Total G & A & Computer Purch. & Tech.	<u>23,150,958</u>
Current Operating Result	5,320,354
Transfer to General fund, 01/01/00	(593,884)
Total Cash/Fund Balances, 02/29/00	<hr/> 4,726,470 <hr/>

The State Bar of California
Statement of Revenue, Expenses
and Changes in Fund Balances
Special Master
March 23, 2000

Total Cash/Fund Balances, 02/29/00	4,726,470
<hr/>	
<u>Projects Approved and Not Paid or Completed</u>	
Replace Token ring Topology in LA - Remaining Cost	108,525
Consolidation of State Bar Court LA	491,546
Discipline Case Processing Programming	100,000
Discipline Information on WEB	15,000
Track Solo/Small Firm Requirement	30,000
Complete Wide Area Network	16,750
Implement Email/Calendaring	65,274
Implement Video Conferencing	30,150
Training Room Furniture	33,500
Implement Network Printing in LA	34,500
Miscellaneous Desktop software	75,000
Total Approved Projects	1,000,245
	<hr/>
Fund Remaining After Approved Projects by Special Master	3,726,225
	<hr/>

EXHIBIT B

APPENDIX B

Table 1

COMPLETED PROJECTS AFFECTING ENTIRE STATE BAR	
PROJECT	DESCRIPTION
PC Upgrades	The State Bar purchased 600 HP Vectra computers with 600 MHZ, 128 mg of RAM, and 6.5 gigabytes of disk space, and monitors. Prior to these upgrades, the State Bar used outdated PCs (some as old as non-pentium IBM 486), most of which were not Y2K compliant.
Word Processing Upgrades	The State Bar purchased Word 2000, Excel and WordPerfect 9. All staff have been trained on the new NT operating system and on WordPerfect 9. Prior to these upgrades, some State Bar employees used WordPerfect 8 while others used WordPerfect 5.1. As a result, documents were incompatible between staff and the work process was less efficient.
AS400 Internet and Database Server Upgrades	In order to keep its computers current, the State Bar upgraded its AS400 Internet and database servers to more efficient and powerful hardware and modern operating systems. The State Bar makes significant investments in its database software and programs. Most of the State Bar's software is custom developed. By keeping the hardware and operating systems current, the State Bar will be able to exploit fully the AS400's capabilities.
Firewall for Wide Area Network	The State Bar purchased and installed a PIX firewall, which prevents unauthorized access to State Bar data. Installing this firewall was the first step in the State Bar's progress toward implementing a wide area network.
Needs Analysis	The State Bar worked with a third party contractor to interview staff and to research products. The study and analysis resulted in recommendations to enhance current systems, provide users with a graphical interface, and provide tools for the desktop.
Voicemail Upgrade	Because the State Bar's voicemail system had reached its capacity in the San Francisco office, the State Bar upgraded to a larger voicemail model.

Table 2

COMPLETED PROJECTS AFFECTING DISCIPLINE SYSTEM ONLY	
PROJECT	DESCRIPTION
Seagull J Walk Product	This product gives the current case tracking systems a graphical interface. The product is installed and the State Bar is developing standardized screens.
Allow 00 in Case Year for Discipline Programs	The State Bar enhanced its discipline-related computer programs to permit the assignment and processing of cases with a year 2000 case number.
Reprogram Discipline AS400 Reports	This project involved programming to modify and update the formatting for the State Bar's discipline reports.

Table 3

AUTHORIZED BUT UNCOMPLETED PROJECTS AFFECTING ENTIRE STATE BAR	
PROJECT	DESCRIPTION
Replace Token Ring Topology in Los Angeles	When complete, this project will permit the Los Angeles office to access the wide area network and implement network printing.
Wide Area Network	Once the State Bar has its telecom services in place and its topology change completed, it will work with an outside vendor to configure the wide area network.
E-mail and Calendaring	As of March 6, 2000, the State Bar's San Francisco office is on an e-mail server. As soon as the wide area network is operational, the Los Angeles office will be configured for e-mail on the server as well. The State Bar currently uses the AS400 proprietary e-mail and calendaring systems. Although, because of the PC upgrades, each employee now has Microsoft Exchange e-mail software, which permits access to the Internet, e-mail and personal calendar, the State Bar continues to research programs for group calendaring, distribution lists and company address books.
Video Conferencing	State Bar employees often travel between the San Francisco and Los Angeles offices to attend meetings. Video conferencing could save the State Bar resources by decreasing the amount of travel between offices. The State Bar proposes that it designate one conference room in each office location as a video conference room.
Training Room Furniture	After the State Bar's moved its San Francisco office from its Franklin Street location to its current Howard Street location, the new training room was without a budget to purchase furniture. A training room is necessary in light of the State Bar's many technology improvements.
Network Printing in Los Angeles	The State Bar projects that network printing in its San Francisco office will be available by March 31, 2000. As soon as the topology change is completed in the Los Angeles office, the State Bar will implement network printing at that location. Many of the State Bar's printers cannot handle the recently upgraded software. Network printing will permit the State Bar to purchase modern, high-speed, shared printers.
Miscellaneous Desktop Software and Automation	Research and purchase desktop software to improve day-to-day processing of cases. Research possibility of hiring a consultant to help automate processes and to assist with transition from WordPerfect 5.1 to WordPerfect 9.

Table 4

AUTHORIZED BUT UNCOMPLETED PROJECTS AFFECTING DISCIPLINE SYSTEM ONLY	
PROJECT	DESCRIPTION
Consolidation of State Bar Court Facilities in Los Angeles	The State Bar seeks to consolidate State Bar Court employees and functions on one floor at the State Bar's Los Angeles location.
Conform Programming to Reflect Changes in Discipline Case Processing	The State Bar seeks to improve communications between OCTC's investigation and trial units as well as to make OCTC's case tracking system more user-friendly and able to accommodate OCTC's many reporting needs.
Additional Discipline Information on State Bar Website	Currently, the State Bar's website displays only very general information about State Bar members. This project will permit the State Bar to provide additional, more specific information concerning member discipline on the website.
Track Complaints, Investigations and Prosecutions Against Solo, Small and Large Firms (SB143)	As a result of recent legislation, the State Bar is required to compile and analyze statistics concerning the percentage of complaints received, investigated and prosecuted against attorneys practicing in solo or small firms as compared with attorneys in large firms.

EXHIBIT C

The
State Bar
of California

180 Howard Street
San Francisco, California 94105-1639
Telephone (415) 538-2000

Senior Management's Proposals for Continued Enhancements of Technology and Other Projects To Improve Efficiencies**

Document Management/Imaging

\$800,000

Currently all PC documents are stored on local drives. Document management products will not only allow users to store data on a server (which is backed up daily), but also will offer other abilities such as version control, keyword and text search. This will allow staff to be more efficient and the data to be more secure. We have looked at several systems; one vendor gave an estimate. To provide a more complete estimate, we need to gather a group of users and several vendors to further define this project. We have met with one vendor and will schedule one or two more meetings so that we may develop an RFP.

Data Warehousing

\$184,000

The Bar's data is a huge resource. Data warehousing software allows the data to be accessed easily by the end user so that ad hoc queries do not always have to be produced by the Computer Services staff, a process that is time consuming and inefficient. This will provide the users with the ability to query the central data and produce reports in a more efficient manner. The figure above is on a ballpark product/user license cost of \$100,000, programming and implementation costs.

Integrated HR, Payroll and Accounting Systems

\$405,350

Rental for system to be installed at third-party service bureau (3 year)

\$201,000

\$606,350

The J.D. Edwards company has an integrated client server-based system and has provided the estimate. This includes software purchase, licensing, implementation and outsourcing the project. At this time, we do not have the in-house capacity to support client server applications, so it would be in the Bar's best interests to out-source this application. We would also recommend researching non-integrated systems as an alternative. The State Bar is currently utilizing the J.D. Edwards accounting system for finances and with the addition of the J.D. Edwards payroll system we would achieve full integration.

State Bar Court Case Management System

\$350,000

In its June 1999 report, Management Advisors, Inc. (MAI), recommended the purchase of a court case management system, since the State Bar Court's current case tracking system does not fully provide for effective trial and appellate level management of cases. Furthermore, the current system is not sufficiently positioned to migrate to electronic document filing, public access to public information or integration with document

* For most of these projects, the cost estimates are rough, and will need refining as the projects are more well defined.

management and digital recording. In January 2000 the State Bar Court disseminated a Request for Quotation for the acquisition and implementation of an integrated court Case Management System. State Bar Court is currently analyzing the six vendor quotations received by the February 25 deadline. Although all of the quotations (ranging from \$225,000 to \$1.1 million) are incomplete in one or more respects, we believe it will be possible to purchase and implement the case management system at an initial cost of \$350,000. Annual subscription fees and maintenance costs, including upgrades, may cost approximately \$20,000 a year and will be funded from the State Bar Court's budget.

State Bar Court Digital Recording

\$85,000

Currently, all State Bar Court proceedings are audio-recorded using 8-track audiocassette tapes, with most of the current audio recorders being approximately 11 years old and beginning to fail. The court must "permanently" retain the audiotapes, and they may become relevant in later disciplinary or reinstatement proceedings. The audiotapes have a shelf-life of about 7-10 years if the tapes are stored under optimum conditions (in a temperature-controlled environment with periodic winding and rewinding of tapes); because of our need to store the audiotapes in the State Bar's offsite storage facility in Los Angeles, we believe many of the older audiotapes may no longer be functional. In order to address the Court's current recording and storage needs, we have been testing digital recording systems in one of the Los Angeles courtrooms for the last 45 days. This digital system allows us to record and store court proceedings on CD-ROM disks. While the case is active, the CD-ROM can be stored in the actual court file, and, when closed, the CDs can be stored in a storage cabinet. The cost reflected above includes the purchasing and installing the digital recording equipment, along with CD-ROM writers, in each of the courtrooms (with a single backup machine in the Clerk's office in each location).

State Bar Court Document Imaging

\$75,000

Storage space is at a premium in San Francisco and will become much more limited in Los Angeles with the consolidation of the State Bar Court onto a single floor this summer. The Court currently maintains collections of historical documents (e.g., "Priors Bank" consisting of the Notice of Disciplinary Charges, State Bar Court decisions(s) and Supreme Court order in every disciplinary case) that are frequently used by both the Court and by others inside (Offices of the Chief Trial Counsel, General Counsel, etc.) and outside the State Bar. In addition, the State Bar Court keeps binders of (a) all Supreme Court orders dating back to at least the early 1970's; and (b) all State Bar Court hearing department decisions and stipulations dating back to the creation of the full-time Court in 1989. A great deal of storage space can be saved by imaging these documents and storing them on CDs. The State Bar Court has consulted with a number of firms that will preform the scanning, indexing, digital imaging and storage functions for the Court at a cost estimated above.

Office of Chief Trial Counsel Litigation Support System

\$116,000

In its June 1999 report, Management Advisors, Inc. (MAI), recommended the selecting and implementing integrated prosecution and court management systems. The software license fees for prosecution modules is estimated to cost \$100,000 and the software license fees for the investigation support system would be \$16,000.

Office of Chief Trial Counsel Graphical User Interface

\$300,000

This programming will bring the database information to the desktop and automatically print correspondence and other macros without re-keying information as well as the cost of making the screens graphical. This will increase efficiency and leverage our investment in the AS400 software.

Office of Chief Trial Counsel Relocation

\$1,565,000

In order to facilitate operations and provide appropriate adjacencies for work group units, the Office of Enforcement needs to be consolidated onto two floors in the Transamerica Building in Los Angeles. The above figure is a very preliminary estimate of consolidating the Office of Enforcement and is subject to further refinement. If consolidation can be complete by August 31, 2000, the State Bar could enter into a sublease for two floors, representing approximately 47,428 rentable square feet as early as October 1, 2000. Since the State Bar of California's lease at Transamerica is a 20-year lease with approximately 12 years remaining on the term, the cost of continuing to lease two unneeded floors over the period of 144 months (October 2, 2000 - September 30, 2012) is potentially \$12,615,316. The Bar would realize substantial savings, less the reconfiguration costs, over a 12-year period if we could sublease the space.

**Updating and Enhancing the Member Billing Function and
Redesign of Membership Fee Statement**

\$398,000

The Membership Fee Statement needs redesign to present billing information more clearly to members, to take advantage of updated accounting processes in software, to accommodate paper and electronic processing of fee payments and to integrate any appropriate existing systems. There is a need to update the accounting software in order to better accommodate batch processing, to reduce the number of keystrokes required to process and to accommodate creation of firm spreadsheets. We also need to study electronic presentation and payment options. The above costs involve expenses relating to the discovery, development, testing and follow-up by the State Bar Analyst contractor through the training in application of the new accounting software.